

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

JOSEPH BOOK

Plaintiff,

v.

DEPT. OF STATE POLICE, ET AL

Defendant.

C.A. NO. 04CV-11557-RCL

**PLAINTIFF'S PROPOSED JURY INSTRUCTIONS**

Plaintiff Joseph Book ("Book") submits the following Proposed Jury Instructions. Book reserves his right to supplement, amend, and/or withdraw any of the requested instructions prior to the charge of the jury.

**INSTRUCTION NO. 1**

**Unlawful Arrest**

Plaintiff Joseph Book claims to have been unlawfully arrested. The United States Constitution provides that no person may be arrested without due process of law. This means that a person may not be arrested without probable cause for such an arrest. A police officer must have information that would lead a reasonable person possessing the same official expertise as the officer to conclude that the person being arrested committed or is about to commit a crime.<sup>1</sup>

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O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, Volume 3B (5<sup>th</sup> Edition, 2001), Instruction No. 165.21.

**INSTRUCTION NO. 2**

**Police Officer and Civilian Witnesses**

You have heard the testimony of witnesses who are civilians and the testimony of witnesses who are police officers. In evaluating this testimony, you are to apply the same standards of evaluation to each witness. You shall not give any greater or lesser weight to the testimony of a witness solely because of his occupation as a police officer.<sup>2</sup>

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<sup>2</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 2.03.7

**INSTRUCTION NO. 3**

**Action by Private Citizen Against Police Officers –  
All Persons Stand Equal Before the Law**

As you know, this action was brought by a private citizen against State police officers. This case should be considered and decided by you as an action between persons of equal standing in the community, of equal worth, and holding the same or similar station in life. All persons stand equal before the law and are to be dealt with as equals in a court of justice.<sup>3</sup>

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<sup>3</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 2.03.11

**INSTRUCTION NO. 4**

The federal civil rights act under which Plaintiff Joseph Book brings this suit was enacted by Congress to enforce the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment provides that:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

As a matter of law, under the Constitution of the United States every citizen has the right to his liberty, that is, the right not to be arrested without due process of law. Section 1983, the federal civil rights statute under which Plaintiff Joseph Book sues, provides that a person may seek relief in this court by way of damages against any person or persons who, under color of any state law or custom, subjects such person to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States.<sup>4</sup>

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<sup>4</sup> O'Malley, Grenig & Lee, Federal Jury Practice and Instructions, Volume 3B (5<sup>th</sup> Edition, 2001), Instruction No. 165.10.

### **INSTRUCTION NO. 5**

#### **The Statute, Its Function, and Elements of Claim for Relief**

Plaintiff asserts a claim under a federal civil rights law, 42 U.S.C. §1983. The statute provides a remedy for individuals who have been deprived of their federal constitutional rights under color of state law. Section 1983 states in part that:

Every person who, under color of [state law], subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the [United States] Constitution and [federal] laws, shall be liable to the party injured [for damages].

Section 1983 creates a form of liability in favor of people who have been deprived of their constitutional rights. It was passed by Congress to enforce the Fourteenth Amendment of the Constitution. The Fourteenth Amendment provides in relevant part that:

no state shall...deprive any person of life, liberty, or property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

Section 1983 itself does not establish or create any federally protected right. Rather, it is the statute that allows the plaintiff in this case to enforce rights guaranteed to her by the federal Constitution.

To establish his claim under section 1983, the plaintiff must demonstrate, by a preponderance of the evidence, the following three elements:

First, that the defendant's conduct was under color of state law;

Second, that this conduct deprived the plaintiff of a right protected by the Constitution of the United States; and

Third, that the defendant's conduct was a proximate cause of the injuries and damages sustained by the plaintiff.

I will explain each of these elements to you.

#### *First Element: Color of Law*

As to the first element – whether the defendants were acting under color of state law – there is no dispute in this case that during the events in issue here the defendant police officers were acting under color of law. Therefore, you need not concern yourself with that element of the plaintiff's case.

*Second Element: Deprivation of a Federal Right*

The second element of the plaintiff's claim is that defendant's conduct deprived plaintiff of a federal right. Plaintiff claims in this case that he was deprived of his right to be free of an unreasonable seizure under the Fourth Amendment to the federal Constitution. I will explain the elements of the plaintiff's Fourth Amendment claim later in these instructions.

*Third Element: Proximate Cause*

The third element that plaintiff must prove is that the defendant's conduct was a proximate cause of plaintiff's injury and damage. Under Section 1983 the defendant is responsible for the natural consequences of his or her actions. An act is a proximate cause if it was a substantial factor in bringing about the plaintiff's injury. You must determine whether injury or damage suffered by the plaintiff was a reasonably foreseeable consequence of the defendant's conduct. An injury that is a direct result, or a reasonable probable consequence of a defendant's conduct, was proximately caused by the conduct. The question is whether a reasonable person would regard defendant's conduct as being a cause of the injury. If so, the conduct is a proximate cause.

A proximate cause need not always be the nearest cause either in time or in location. In addition, the law recognizes that there may be more than one proximate cause of an injury. Many factors, or the conduct of two or more people, may operate at the same time, either independently or together, to cause an injury.

If you find that plaintiff has proven all three elements of his claim by a preponderance of the evidence with respect to a particular defendant whom you are considering separately, you should find that defendant liable. If you find that plaintiff has not proven any one of these elements with respect to the particular defendant you are considering, then you must find that defendant not liable and return a verdict for him. Remember that the case as to each of these individual defendants must be considered separately by you. The fact that you find that one of the defendants is or is not liable does not determine your verdict as to any other one of these defendants.<sup>5</sup>

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<sup>5</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 3.01.1

**INSTRUCTION NO. 6**

**No Specific Intent**

Section 1983 does not require the plaintiff to demonstrate that the defendant acted willfully, or with the specific intent to violate the plaintiff's federally protected rights. Nor does §1983 require the plaintiff to show that the defendants abused governmental power.<sup>6</sup>

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<sup>6</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 3.02.1



**INSTRUCTION NO. 7**

**Burden of Proof on Section 1983 Elements**

The plaintiff has the burden of proving each element of his §1983 claim by a preponderance of the evidence. Preponderance of the evidence means that it is more likely than not that the fact occurred. If the plaintiff proves that the evidence, on balance, tips ever so slightly in favor of a finding of liability, the plaintiff will have met his burden of proof.

Thus, in order to prevail on his claim, the plaintiff must persuade you that it is more likely than not: first, that the conduct complained of was committed by a person acting under color of state law; second, that the conduct deprived the plaintiff of a right protected by the federal Constitution; and third, that the defendants' conduct was the proximate cause of the injuries and damages sustained by the plaintiff.<sup>7</sup>

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<sup>7</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 3.03.1

**INSTRUCTION NO. 8**

**Misuse of State Authority – General Instruction**

State or local officers act “under color of state law” when they act within the limits of their lawful authority. However, they also act “under color of state law” when they act without lawful authority or beyond the bounds of their lawful authority, if their acts are done while the officials are purporting or pretending to act in the performance of their official duties. An official acts “under color” of state law if he abuses or misuses a power that he possesses only because he is an official.<sup>8</sup>

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<sup>8</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 13.01.2

**INSTRUCTION NO. 9**

**Compensatory Damages – General Principles –  
Past and Future Damages**

If you find that the defendants are liable to the plaintiff, then you must determine an amount that is fair compensation for all of the plaintiff's damages. These damages are called compensatory damages. The purpose of compensatory damages is to make the plaintiff whole – that is, to compensate the plaintiff for the damage that the plaintiff has suffered. Compensatory damages are not limited to expenses that the plaintiff may have incurred because of his injury. If the plaintiff wins, he is entitled to, in addition to his expenses, compensatory damages for the physical injury, pain and suffering, mental anguish, shock and discomfort that he has suffered because of the defendant's conduct.

You may award compensatory damages only for injuries that the plaintiff proves were proximately caused by the defendant's allegedly wrongful conduct. The damages that you award must be fair compensation for all of the plaintiff's damages, no more and no less. Compensatory damages are not allowed as a punishment and cannot be imposed or increased to penalize the defendant. You should not award compensatory damages for speculative injuries, but only for those injuries which the plaintiff has actually suffered, or that the plaintiff is reasonably likely to suffer in the future.

If you decide to award compensatory damages, you should be guided by dispassionate common sense. Computing damages may be difficult, but you must not let that difficult lead you to engage in arbitrary guesswork. On the other hand, the law does not require that the plaintiff prove the amount of his losses with mathematical precision, but only with as much definiteness and accuracy as the circumstance permit.

You must use sound discretion in fixing an award of damages, drawing reasonable inferences where you find them appropriate from the facts and circumstances.

You should consider the following elements of damages, to the extent you find them provide by a preponderance of the evidence.

*A. Damages Accrued*

If you find for the plaintiff, he is entitled to recover an amount that will fairly compensate him for any damages he has suffered to date.

*B. Calculation of Future Damages*

If you find that the plaintiff is reasonably certain to suffer damages in the future from his injuries, then you should award him the amount you believe would fairly compensate him for such future damages. In calculating future damages, you should consider the standard table of mortality as compiled by the United States Bureau of the Census, or other recognized morality table.<sup>9</sup>

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<sup>9</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 18.01.1

**INSTRUCTION NO. 10****Pain, Suffering, and Emotional Distress**

In assessing compensatory damages, you may include an amount for pain, suffering, and emotional distress that you determine to be reasonable compensation in the light of all the evidence in this case. We all know that the nature and degree of pain and mental distress may differ widely from person to person. Consequently, the law does not try to fix, nor does the law permit, a precise formula by which pain or emotional distress as an element of compensatory damages may be measured and reduced to dollars and cents. Instead of providing a formula for measuring these damages, the law leaves the determination of the amount of damages to the common sense and good judgment of you, the jurors. You should arrive at a monetary amount, in the light of your common knowledge and general experience, and without regard to sentiment, that you deem to be fair, reasonable, and adequate. In other words, without favor, without sympathy, and without any precise formula, you as jurors must arrive at a sum of money that will justly, fairly, and adequately compensate the plaintiff for the actual pain, suffering, and emotional distress you find that he endured as the direct result of any constitutional deprivation he may have suffered. The amount of damages should be neither excessive nor inadequate. It should be fair, just, and reasonable.<sup>10</sup>

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<sup>10</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 18.01.5

**INSTRUCTION NO. 11**

**Aggravation or Activation of Latent Emotional Condition**

If you find that the plaintiff had a pre-existing psychological condition that made him more subject to emotional injury than a person in normal health, the defendants are nevertheless responsible for his injuries to the extent to which their violation of the law aggravated that condition. This is so even though the plaintiff's emotional distress, due to his prior condition, may have been greater than that which would have been suffered by a normal person under the same circumstances.

However, if you find that the plaintiff's emotional condition would have developed into its present state, even without the trauma of any violation of the law involved in this case, then the plaintiff cannot recover for any progression or worsening of his emotional condition.<sup>11</sup>

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<sup>11</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 18.01.10

## INSTRUCTION NO. 12

### **Punitive Damages**

If you have awarded the plaintiff either compensatory or nominal damages, the law permits the jury, under certain circumstances, to award the plaintiff punitive damages in order to punish the wrongdoer for the violation of constitutional rights, or some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct. If you, the jury, should find, from a preponderance of the evidence, that the conduct of the defendants that proximately caused injury or damage to the plaintiff was maliciously, or wantonly, or oppressively done, then the jury may, if in the exercise of discretion they unanimously choose to do so, award such amount as the jury shall unanimously agree to be proper as punitive damages.<sup>12</sup>

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<sup>12</sup> Schwartz and Pratt, Section 1983 Litigation, Volume 4 (2003), Instruction 18.07.1

Respectfully submitted,

JOSEPH BOOK

By his attorneys,

November 21, 2006

/s/ Christopher H.M. Carter

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CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of November, 2006, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ Christopher H.M. Carter